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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,966	11/14/2000	Scott D. Landes	5482	6125

7590

06/06/2002

Carl L Johnson
Jacobson and Johnson
Suite 285
One West Water Street
St Paul, MN 55107-2080

EXAMINER

COURSON, TANIA C

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 06/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/710,966

Applicant(s)

LANDES, SCOTT D.

Examiner

Tania C. Courson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restriction

1. The election requirement stated in the last office action (Paper No. 3) is hereby repeated, and thus made FINAL.

2. Applicant's election with traverse of group I, claims 1-12, in Paper No. 5 is acknowledged. The traversal is on the ground(s) that it is an undue financial burden on the applicant to have to pursue an application in three separate classes. This is not found persuasive because this is not a criteria for the review of an application.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 13-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected groups II and III, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5.

Drawings

4. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Objections

5. Claims 5 and 7-10 are objected to because of the following informalities:

- a) claim 5, in line 2, "is weather resistant" should read "are weather resistant";

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- b) claim 7, in line 1, "The hollow one piece anchoring marker post of claim 1"
should read "The marker post of claim 1";
- c) claim 8, in line 8, "proximate the second end" lacks antecedent basis;
- d) claim 9, in line 1, "The hollow one piece anchoring marker post of claim 7"
should read "The marker post of claim 7", and;
- e) claim 10, in lines 1-2, repetitive claim in comparison to claim 7.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-7 and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Griffiths et al. (U.S. Patent No. 5,832,672).

Griffiths et al. disclose in Figures 4A and 4B, an anchoring device comprising:

With respect to claim 1:

- a) a hollow elongated member (Fig. 4A, hollow shank 52) said elongated member composed of a flexibly resilient polymer plastic (column 3, lines 19-24), said

- elongated member having a first end (Fig. 4A, head portion 54) and a second end (Fig. 4A, pointed end 56);
- b) a first integral anchoring flap (Fig. 4B, elastically deformable link 68), said anchoring flap having a first end (Fig. 4B, face surface 78) and a second end (Fig. 4B, base 70), said anchoring flap located proximate the second end of said elongated member (Fig. 4B);
 - c) and a first flexible living hinge (Fig. 4B), said anchoring flap attached to the elongated member at the second end of said anchoring flap by said first flexible living hinge (Fig. 4B), said anchoring flap moveable from a first closed position to a second open position (Fig. 4A-B).

With respect to claim 2:

- a) a second integral anchoring flap (Fig. 4A, projections 58) and a third integral anchoring flap (Fig. 4A, projections 58), said second integral anchoring flap and said third integral anchoring flap each having a first end and a second end (Fig. 4A), said second integral anchoring flap and said third integral anchoring flap each located proximate the second end of said elongated member (Fig. 4A), said first integral anchoring flap and said second integral anchoring flap and said third integral anchoring flap circumferentially positioned around the said elongated member (Fig. 4A);
- b) a second flexible living hinge and a third flexible living hinge (Fig. 4A), said second integral anchoring flap attached to the elongated member at the second

end of said second integral anchoring flap by the second flexible living hinge (Fig. 4A), said third integral anchoring flap attached to the elongated member at the second end of said third integral anchoring flap by the third flexible living hinge (Fig. 4A), said second integral anchoring flap and said third integral anchoring flap moveable from a first closed position to a second open position (Fig. 4A).

With respect to claim 3:

- a) wherein said polymer plastic is polycarbonate or polyethylene (column 3, lines 19-24).

With respect to claim 4:

- a) wherein said elongated member is triangular, circular, rectangular or square shaped (Fig. 4A).

With respect to claim 5:

- a) wherein said elongated member and said anchoring flap are weather resistant (column 3, lines 19-24).

With respect to claim 6:

- a) including a weather resistant cap (Fig. 4A, head portion 54) for covering the first end of said elongated member.

With respect to claims 7 and 9-12:

- a) wherein said elongated member is sufficiently stiff to permit the marker post to be driven into a top layer of soil (column 3, lines 57-59).
- b) wherein said polymer plastic is polycarbonate or polyethylene (column 3, lines 19-24).
- c) wherein said elongated member and said anchoring flaps are weather resistant (column 3, lines 19-24).
- d) including a weather resistant cap (Fig. 4A, head portion 54) for covering the first end of said elongated member.

8. Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Peterson et al. (U.S. Patent No. 4,625,473).

Peterson et al. discloses in Figures 1, 7 and 9, a surveying post comprising:

With respect to claim 8:

- a) a triangular shaped elongated member (Fig. 9) having a first panel, a second panel, and a third panel forming the elongated member (Fig. 9, fins 20), said elongated member composed of a flexibly resilient polymer plastic (column 6, lines 12-18);
- b) a first anchoring flap, a second anchoring flap, and a third anchoring flap (Fig. 7, fins 20), each of said anchoring flaps having a first end and a second end (Fig. 7), each of said anchoring flaps integrally connected to said elongated member (Fig.

7), each of said anchoring flaps located proximate the second end of said elongated member (Fig. 7);

- c) a first flexible living hinge, a second flexible living hinge, and a third flexible living hinge (Fig. 7); the second end of said first anchoring flap attached to the first panel of said elongated member by said first flexible living hinge, the second end of said second anchoring flap attached to the second panel of said elongated member by said second flexible living hinge (Fig. 7), the second end of said third anchoring flap attached to the third panel of said elongated member by said third flexible living hinge (Fig. 7), each of said anchoring flaps moveable from a first closed position to a second open position whereby the flaps has a sufficient memory to stay in the open position until the post can be embedded (Fig. 1).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited on PTO-892 and not mentioned above disclosed relative devices:
- a) Landes (U.S. Patent No. 6,158,919) discloses an extended life marker post; b) Landes (U.S. Patent No. 6,099,203) discloses a triangular shaped marker post; c) Becquet (EP 0 264 915 A1) discloses an anchoring rod; d) Bertrand (FR 2 695 419 A1) discloses a permanent survey marker; e) Jamieson discloses an surveying system with a post having hinged wings at the base; f) Marthaler et al. discloses a permanent marker for utilities; g) Lu discloses a ground anchor; h) Arthur discloses a marking post; i) Diederhagen et al. discloses a knockover roadway marker post; j) Pichowicz discloses a land bound stake device, and; k) O'Brien discloses a road marker.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania Courson whose telephone number is (703) 305-3031. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (703) 308-3875. The fax number for this Organization where this application or proceeding is assigned is (703) 308-7724.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



DIEGO F.F. GUTIERREZ
SUPERVISORY PATENT EXAMINER
GROUP ART UNIT 2859

TC
June 3, 2002